

FILED

NAME June Thepsombandith

PRISON NUMBER E 24.79

C-1-111. P.O. Box. 921
Centinela State Prison
CURRENT ADDRESS OR PLACE OF CONFINEMENT
Imperial, Ca. 92251-921.

CITY, STATE, ZIP CODE

2254	✓ 1983
FILING FEE PAID	
Yes	No ✓
HFP MOTION FILED	
Yes	No ✓
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Court	ProSe

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY *Rm* DEPUTYUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'07CV 2248 BEN RBB

June Thepsombandith:

(FULL NAME OF PETITIONER)

PETITIONER

v.

(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

V.M. ALMAGER
(WARDEN)

and

RESPONDENT

Civil No. _____

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

The Attorney General of the State of California, Additional Respondent.

1. Name and location of the court that entered the judgment of conviction under attack:
SUPERIOR COURT; COUNTY OF SAN DIEGO
2. Date of judgment of conviction: January 17-2006.
3. Trial court case number of the judgment of conviction being challenged:
(Superior Court No. SCDI 89842)
4. Length of sentence: 24 years.

5. Sentence start date and projected release date: January-17-2006
projected 24 years later= 2030.
6. Offense(s) for which you were convicted or pleaded guilty (all counts):
(counts 1 and 2 P.C. 246.3) count 3 P.C. 12021 subdivision(a)(1)
& 12316(b)(1) count 4 and 5 P.C. 245(a)(1) and P.C. 12022.7(a)

7. What was your plea? (CHECK ONE)

- (a) Not guilty
- (b) Guilty
- (c) Nolo contendere

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

- (a) Jury
- (b) Judge only

9. Did you testify at the trial?

Yes No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?
 Yes No

11. If you appealed in the California Court of Appeal, answer the following:

- (a) Result: Affirmed as modified.
- (b) Date of result, case number and citation, if known:
DEC-12-2006, (Super.Ct. No. SCD189842) D047885
- (c) Grounds raised on direct appeal: THE PROSECUTOR COMMITTED MISCONDUCT IN ARGUMENT!, AND , ENHANCEMENTS

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

- (a) Result: DENIED
- (b) Date of result, case number and citation, if known: July-19-2007
S149522
- (c) Grounds raised: MISCONDUCT ON PROSECUTOR COMMITTED IN ARGUMENT, AND ENHANCEMENTS.

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:
- (a) Result: Denied;
 - (b) Date of result, case number and citation, if known:
July-19-2007 (S149522)
 - (c) Grounds raised: THE PROSECUTOR COMMITTED MISCONDUCT IN ARGUMENT; AND ENHANCEMENTS...

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?
 Yes No
15. If your answer to #14 was "Yes," give the following information:
- (a) California Superior Court Case Number:
 - (b) Nature of proceeding:
 - (c) Grounds raised:
 - (d) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No
 - (e) Result: _____
 - (f) Date of result: _____
16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?
 Yes No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number: _____
- (b) Nature of proceeding: _____

- (c) Grounds raised:

- (d) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No
- (e) Result: _____
- (f) Date of result: _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

Yes No

19. If your answer to #18 was "Yes," give the following information:

- (a) California Supreme Court Case Number: _____
- (b) Nature of proceeding: _____

- (c) Grounds raised:

- (d) Did you receive an evidentiary hearing on your petition, application or motion?
 Yes No
- (e) Result: _____
- (f) Date of result: _____

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your first federal petition for writ of habeas corpus challenging this conviction?

Yes No (IF "YES" SKIP TO #22)

- (a) If no, in what federal court was the prior action filed?

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

Denied on the merits?

Dismissed for procedural reasons?

(iii) Date of decision: _____

- (b) Were any of the issues in this current petition also raised in the prior federal petition?

Yes No

- (c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

Yes No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** THE PROSECUTOR COMMITTED MISCONDUCT IN ARGUMENT BY MISSTATING THE LAW OF ASSAULT, AND TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT, THE ERROR WAS PREJUDICIAL AS TO THE CHARGE OF ASSAULT ON GONZALES...

Supporting FACTS (state *briefly* without citing cases or law)

- (A). THE Prosecutor's Argument the Gun Need not Be Loaded for an Assault..
- (B). No Objection Was Required, if an Objection was Required Appellant was Denied Effective Assistance of Counsel by Failure to Object...
- (C). The Error was Prejudicial...

Did you raise **GROUND ONE** in the California Supreme Court?

Yes No.

(b) **GROUND TWO:** APPELLANT WAS DENIED DUE PROCESS OF LAW BY IMPOSITION OF AN INCREASED TERM OF IMPRISONMENT IN VIOLATION OF THE UNITED STATES CONSTITUTIONAL:

Supporting FACTS (state briefly without citing cases or law):

The trial court imposed upper term as to the gun enhancement..

Did you raise **GROUND TWO** in the California Supreme Court?

Yes No.

(c) **GROUND THREE:**

Supporting FACTS (state *briefly* without citing cases or law):

NONE.

Did you raise **GROUND THREE** in the California Supreme Court?

Yes No.

(d) **GROUND FOUR:**

Supporting FACTS (state *briefly* without citing cases or law):

NONE

Did you raise **GROUND FOUR** in the California Supreme Court?

Yes No.

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

Yes No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

(e) Grounds raised:

(f) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing:

(b) At arraignment and plea:

(c) At trial:

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court:

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-26-07

(DATE)

X June the twenty sixth

SIGNATURE OF PETITIONER

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

(a) PLAINTIFFS

June Thepsombandith

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

FILING FEE PAID	
<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
IF MOTION FILED	
<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
COPIES SENT TO:	
Court	Note: <input checked="" type="checkbox"/> Press <input type="checkbox"/> AND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

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VM Almager, CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

June Thepsombandith
PO Box 921
Imperial, CA 92251
E-12479

ATTORNEYS (IF KNOWN)

U/LO 2248 BEN RBB

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT
(For Diversity Cases Only))

- | | | | | |
|---|-----------------------------|------------------------------|---|---|
| Citizen of This State | <input type="checkbox"/> PT | <input type="checkbox"/> DEF | PT | DEF |
| Citizen of Another State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	SOCIAL SECURITY	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (13958)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(n))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	FEDERAL TAX SUITS	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input checked="" type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc.	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property			<input type="checkbox"/> Security Act	

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding 2 Removal from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

November 27, 2007

SIGNATURE OF ATTORNEY OF RECORD

R. Muller